



MEMORANDUM FROM ACTING DIRECTOR GENERAL TODD (M)

TO: All Assistant Secretaries and Executive Directors

SUBJECT: Guidance on Operations during a Lapse in Appropriations

The purpose of this memorandum is to provide an updated integrated reference guide concerning Department of State operations before and during a lapse in appropriations. (This supersedes the previous guidance issued December 9, 2017.

Departmental entities will continue to operate until their respective balances are insufficient to continue. While many appropriated funds expire after one year, the Department has some accounts that are 2-year funds or no-year funds.

If there is no appropriation or continuing resolution before midnight on January 19, 2018, Department elements using multi-year or no-year appropriations (with remaining available balances), trust funds, other permanent appropriations, fees, and the Working Capital Fund will fund and continue operations as long as this funding is available. Please note that due to reduced funding or revised authorities, such availability for FY 2018 may be different than what was in place for the previous lapse in appropriations.

The attached guidance has been split into two chapters to ensure clear operating instructions for: a) a period of operations using residual balances (Chapter 1), and b) operations during a lapse in new appropriations (Chapter 2).

Per both chapters, contractors/grantees shall continue to perform with Contracting Officer Representative (COR)/Grants Officer's Representative (GOR) oversight under the terms of their contracts/grants until the obligation has been liquidated, unless the post/domestic/contracting/grant-making activity cannot provide adequate oversight of contract/grant performance during a shutdown period by excepted employees. All requisitions, including those for any new and continuing services, should be submitted to your contracting/grants officer with the notation "subject to the availability of funds" appearing clearly, as is the usual practice. However, under no circumstances may a purchase order or contract/grant

Chapter 1

award be authorized or made without sufficient funds being available at the time the obligation is incurred.

If there is no appropriation or continuing resolution before midnight on January 19, 2018, posts and offices supported by single-year appropriations will immediately commence procedures detailed in Chapter 2 on the first business day following that date, i.e., Monday, January 22, 2018. Posts that normally operate on Saturdays or Sundays will immediately commence procedures detailed in Chapter 2 on Sunday, January 21, 2018.

The Department will continue as many normal operations as possible. Operating status and available funding will need to be monitored continuously and closely, and planning for a lapse in appropriations must be continued.

If you have any questions, please contact the appropriate office or email LapseQuestions@state.gov.

Chapter 1

Chapter 1 applies to a scenario where there is no new appropriation or a continuing resolution on or after midnight on January 19, 2018. If there is no new appropriation or a continuing resolution on or after midnight on January 19, 2018, Departmental entities will continue operating using residual balances in multi-year and no-year appropriations, trust funds, other permanent appropriations, fees, and the Working Capital Fund until these funds are insufficient to continue. During this time, operations will be restricted.

If there is no new appropriation or continuing resolution before midnight on January 19, 2018, posts and offices supported by single-year appropriations will immediately commence procedures detailed in Chapter 2 on the first business day following that date, i.e., Monday, January 22, 2018. Posts that normally operate on Saturdays or Sundays will immediately commence procedures detailed in Chapter 2 on Sunday, January 21, 2018.

If residual balances in multi-year and no-year appropriations, trust funds, other permanent appropriations, fees, and the Working Capital Fund are insufficient or are exhausted during the lapse, then the shutdown plan detailed in Chapter 2 will become operative.

Funding will be subject to apportionment and allotment requirements. Those balances may be reprioritized and reallocated for use during a lapse in appropriations through the financial plan process. Such resources remain subject to any spending plans or notifications previously submitted to Congress on their functions; as well as statutory requirements regarding the reprogramming or transfer of funds, guidance from OMB, and any other relevant guidance.

Bureaus and offices must work with the Bureau of Budget and Planning (BP) and the Office of U.S. Foreign Assistance Resources (F) to identify residual balances available for continued operations in absence of an appropriation.

Until there is an appropriation or a continuing resolution, the following rules and restrictions apply (any exceptions must be approved by the Office of the Under Secretary for Management in writing):

- Bureaus may not exceed residual balances identified by BP or F;

Chapter 1

- No new obligations should be made except for payroll and to protect life and property. This includes purchases of equipment, services, or supplies. Bureaus and entities that are managing multi-year foreign assistance programs can make new obligations with FY 2018 and prior year funds in coordination with F;
- No new travel should be arranged; no one should make new arrangements to attend conferences or workshops;
- Previously funded temporary duty (TDY) travel using FY 2017 or FY 2018 funds commencing on or after January 22, 2018 (January 21 for those posts that operate on Sundays) requires permission from the Office of the Under Secretary for Management. Requests should be sent to LapseQuestions@state.gov;
- PCS travel may continue as long as funds remain available;
- Consistent with published Hiring Freeze guidance, no new offers of employment may be made as of the date of this guidance;
- Prospective employees with a final offer letter and a firm start date may report to work;
- For medical emergencies, medical travel and services obligations can be incurred. Please coordinate with MED, M, and CGFS in emergency situations where payment is required immediately;
- Previously scheduled and funded training may continue as planned;
- No representational events may be held;
- No speeches should be made unless approved by the PA PDAS;
- Petty cash reimbursements may be filed, but no money can be disbursed until appropriations or a continuing resolution have been enacted;
- The metro check program will continue to support those personnel required to work during the shutdown throughout January 2018;
- No overtime is authorized; compensatory time may be accrued;
- Time and attendance procedures will continue as normal;
- Civil Service career ladder promotions will be processed following normal procedures;
- Promotions for current locally employed staff that resulted from a vacancy announcement and which were scheduled to become effective January 22, 2018 (January 21 for those posts that operate on Sundays) are subject to HRO determination after consideration of local law.
- Locally employed staff in training or developmental level positions will receive their promotions following normal procedures;
- Foreign Service administrative promotions (similar to GS career ladder) will be processed following normal procedures;

Chapter 1

- All within-grade increases, including Merit-Based Compensation performance awards, will continue to be processed following normal procedures;
- If a Department office is located in a government building affected by a lapse in appropriations, the facility may become unsupported. The continuance of operations in such instances will be treated on a case-by-case basis by the Office of the Under Secretary for Management.
- For Department employees on details to other agencies affected by a lapse in appropriations, employees should coordinate with their home bureau and/or Career Development Officer (CDO);
- Other agency employees on detail to the State Department should check with their home agency for instructions;
- Other agencies with a presence abroad may enter into a lapse of appropriations sooner because they operate under single-year appropriations. If an agency has determined that certain of its positions abroad do not meet the criteria of “excepted” in the absence of appropriations, and that determination conflicts with that of the Chief of Mission, then the Chief of Mission should attempt to resolve the matter directly with the parent agency concerned (see Chapter 2, Section I.B.); and
- For guidance on repatriation loans, see Chapter 2, Section VIII, paragraph 12.

As noted previously, if residual balances in multi-year and no-year appropriations, trust funds, other permanent appropriations, fees, and the Working Capital Fund are insufficient, then the shutdown plan detailed in Chapter 2 will become operative.

Chapter 2

Chapter 2 applies to a scenario in which a single-year appropriation has lapsed or the respective residual balances in multi-year and no-year appropriations, trust funds, other permanent appropriations, and the Working Capital Fund are insufficient to continue.

If your bureaus are instructed by the Office of the Under Secretary for Management to deliver furlough letters to non-excepted personnel, only excepted functions will be continued until appropriations are restored.

Chapter 2 contains a detailed plan for operating during a lapse in appropriations. For ease of use, Chapter 2 guidance is provided in tabular form:

- I. Determination of Excepted Functions and Positions
- II. Orderly Shutdown of Non-Excepted Functions
- III. Personnel
- IV. Travel
- V. Training
- VI. Allowances
- VII. Contracts
- VIII. Obligations and Disbursements
- IX. Time and Attendance Reporting
- X. Speech-Making
- XI. Representation Events

I. Determination of Excepted Functions and Positions

A. Definition of Excepted Functions: "Excepted" functions that may be continued in an absence of appropriations include those necessary for emergencies involving "the safety of human life or the protection of property," and those necessary for activities essential to national security, including the conduct of foreign affairs essential to national security. Employees performing "excepted" functions will continue to report to work and perform their duties.

B. Chief of Mission (COM) Authority Regarding Other U.S. Government Agency Employees Abroad: Under a lapse of appropriations, each U.S. government agency at post must determine which positions meet the criteria of "excepted" in the absence of appropriations. If an agency has determined that certain of its positions abroad do not meet those criteria, and that determination conflicts with the views of the Chief of Mission, then the Chief of Mission should attempt to resolve the matter directly with the parent agency concerned. Based on COM authority and the Department's foreign affairs responsibilities, the COMs and Department's judgment about what functions constitute the conduct of foreign relations essential to national security carries great weight. If the COM is unable to reach agreement with another agency on what functions should continue to be performed during a lapse of appropriations, the COM may refer the matter to Washington to see if the Department is able to reach an accommodation with the other agency.

The COM will be responsible for informing the most senior officials of other agencies at post immediately upon notification by OMB that we are to implement shutdown procedures.

C. Consular Operations Domestically and Abroad: Consular operations domestically and abroad will remain 100% operational as long as there are sufficient fees to support operations. However, if a passport agency is located in a government building affected by a lapse in appropriations, the facility may become unsupported. The continuance of consular operations in such instances will be treated on a case-by-case basis by the Office of the Under Secretary for Management.

D. Use of E-Mail/Telegrams/Remote Access/Mobile Applications: The Department will be minimally staffed if a shutdown occurs. Department managers and post managers are asked to reduce message traffic to include only the most

Chapter 2

urgent need. Remote access and mobile programs, to include fobs, secure laptop services, and centrally managed Blackberry support services will be minimally staffed. Additionally, due to reduced domestic staff levels, all personnel should be cognizant that there are fewer personnel available to respond to incoming messages.

Non-excepted employees should turn off all Department-provided mobile devices, and excepted personnel should not communicate with non-excepted employees. For purposes of communicating work status to non-excepted employees, supervisors should have employee personal contact information on file.

II. Orderly Shutdown of Non-Excepted Functions

All employees scheduled to work on the first workday following a lapse in appropriations should report to work. Posts that normally operate on Saturdays or Sundays will immediately commence procedures detailed in Chapter 2 on Sunday, January 21, 2018. Non-excepted employees should perform only those tasks necessary to safeguard property, records, and information, and to complete administrative functions such as processing payroll for pay through the previous pay period (if one has just ended). In addition, non-excepted personnel should take measures to secure files; make external contacts necessary to communicate the office's status, such as notifying parties of the cessation of normal business, cancelling non-essential meetings, conferences, and other previously arranged business; completing at-post passport work; documenting the status of cases and projects so that they may be resumed, transferred, or otherwise appropriately handled when the Department's operational status is regularized; performing those tasks necessary to protect confidential information; and performing necessary functions to process all unpaid bills in hand for obligations incurred prior to the lapse in appropriations. We anticipate that these activities will take approximately four hours for most employees.

After performing the functions necessary for an orderly suspension of non-excepted operations, employees performing "non-excepted" functions will be furloughed. Managers are reminded that the Government cannot accept voluntary services – therefore, no employee may work if he or she is in a non-excepted status. Employees are advised that “work” includes reporting to work as well as using fobs, iPhones, BlackBerrys, and teleworking. These employees should monitor the news for information on an additional continuing resolution and, unless told otherwise, should report back to work on their next scheduled workday once another continuing resolution or an appropriation bill is enacted (passed by the House and the Senate and signed by the President), unless told to do so earlier (e.g., for rotation or other purposes).

HR developed the Furlough functionality in the Global Employment Management System (GEMS) to assist bureaus with the administrative tasks associated with lapse-in-appropriation and administrative furloughs. Bureau Executive Directors must select Lapse in Appropriations that is part of the furlough functionality in GEMS to denote which positions are excepted and which are not. Doing so enables Bureau Executive Directors and HROs at posts to generate and

Chapter 2

distribute furlough notices and related documents for non-excepted employees as quickly as possible on the day of the shutdown. The application includes reports on excepted employees and positions. A Furlough job aid is available on the HR Systems Online Resources webpage.

If a shutdown occurs, bureau Executive Directors are responsible for forwarding a copy of the furlough letter to non-excepted domestic employees who are not at work. Bureau Executive Directors should also advise their posts' Management Officers to similarly distribute furlough notices to impacted employees abroad, and Management Officers should also advise their bureaus' executive offices by cable of the names of non-excepted employees on leave or travel in the United States who are not expected back at post within two weeks of the furlough. Please provide a contact address for these employees and bureaus will attempt to forward a copy of the furlough notice to each employee. Management Officers should confirm with each of these employees as they return to post that they have received notification. If any employees are visiting other posts, and contact names or addresses are available, please contact that post for assistance in delivering the notice and getting an acknowledgement of receipt, citing this guidance in support of the request.

For other non-excepted employees who cannot be contacted within two weeks due to lack of a contact address, please advise HR/Employee Relations (HR/ER) of their names and their expected date of return to the bureau or the post. If possible, HR/ER will try to locate these employees.

The text of the Notice of Furlough for Civil Service employees is located in attachment A.

The text of the Notice of Furlough for Foreign Service employees is located in attachment B.

III. Personnel

U.S. Direct Hires Employees

An immediate hiring freeze will apply during a lapse in appropriations. Entry-on-board dates for prospective employees with employment offers are suspended until the funding lapse is over. No new job offers may be made.

We will need to examine the text of any subsequent appropriation or continuing resolution to determine if the Congress has authorized retroactive pay and allowances. All non-excepted personnel support activities, such as unfunded security investigations, should be suspended.

Family Members and Locally Employed (LE) Staff at Post

Eligible Family Members employed at post follow the furlough procedures of other direct-hire U.S. government employees unless paid on the local pay plan. Application of the furlough to LE staff (including foreign nationals and locally resident U.S. citizens, whether on personal services agreements (PSA) or direct-hire appointments) depends on local labor laws in each country. In general, Department LE staff will be required either: a) to report to work as directed by their supervisor (i.e., if “excepted,” or if treated as “excepted” because these LE staff legally must be paid, provided that in no event may LE staff report to work if adequate supervision is unavailable); b) to be on excused absence leave per 3 FAM 7451, if LE staff must be paid under local labor law but may not actually work because, for example, adequate supervision is not available; or c) to be placed on ordinary furlough status.

HROs at each post will examine local labor law and make appropriate, post-specific determinations in conjunction with post management. The COM should inform other U.S. government agencies at post that, as in the past, the Department plans generally to treat those LE staff members as excepted whom the Department believes must be paid under host state labor laws regardless of attendance. HR/OE will be in touch with those posts that indicated during sequestration planning that their host country local laws allow personnel to be furloughed.

Part-Time Employees

Part-time employees should follow the same guidance as full-time employees.

WAE Employees and Seasonal Employees

Employees with a When-Actually-Employed (WAE) work schedule and seasonal employees are called to duty at identified periods of the year in accordance with pre-established conditions. WAE employees are non-full-time employees without a regularly scheduled tour of duty. A seasonal employee is an employee hired into a position for which the customary annual employment is six months or less. Whether either group is called for work during the period in which furloughs are scheduled is discretionary with agencies, but those personnel must be performing excepted functions.

Rotation of Personnel

The decision to rotate personnel to perform excepted functions may be made at bureau and post discretion in unique and compelling circumstances. However, the following should be taken into consideration when making a decision on rotations:

- Managers should take into account the potential impact on unemployment compensation eligibility for the employee, based on local jurisdictions' unemployment insurance policies.
- Decisions on rotations for specific positions should balance the Department's need for continuity and equity to the employees.
- Posts may determine on what basis rotations may take place (based on increments of at least one week), but due consideration should be given to continuity and fairness.
- Personnel rotated into and out of an excepted function must have the requisite qualifications to perform the function.

All decisions to rotate employees must be documented by the bureau or post.

Details

Detailees follow the furlough policies and procedures of their home agencies because they remain officially employed by their home agencies. If you are detailed from the State Department to another federal agency, the State Department will determine if and how you are affected. If you are detailed to the State Department from another federal agency, your home agency will determine if and how you are affected. For more information and for details involving non-Federal agencies, refer to OPM guidance.

IV. Travel

Travel should be limited to that necessary for emergencies involving the safety of human life or the protection of property, or that necessary for activities essential to national security, including the conduct of foreign relations essential to national security. This may include, but is not limited to, the negotiation of major treaties; attending a significant bilateral or multilateral meeting; maintaining excepted post operations; emergency visitation, medical, or other ordered evacuation; or providing food, medicine, or other essential services to refugees. All travel authorizations must be approved by the Deputy Chief of Mission (DCM) at post, the Principal Deputy Assistant Secretary (PDAS) in the regional and functional bureaus, or the Assistant Secretary in the management bureaus.

Reassignment of personnel already planned may be continued, such as movement related to changes in post assignment, only if funds have been previously obligated.

If personnel are in travel status abroad at the time of the lapse but are not performing excepted activities, they should stop working and await further instructions. Because funding for travel abroad is obligated when the travel commences or when any cost was incurred for the travel (i.e., prior to the lapse) and because we are hopeful that any hiatus in funding will be temporary, do not yet instruct personnel in non-excepted travel status abroad to return to their home duty stations. If such persons are not performing an excepted activity, they should be furloughed.

Personnel in domestic travel status, including students in training and on authorized travel orders, who are not performing excepted functions should make arrangements to return or deploy to their duty city as soon as informed by the Director of the Foreign Service Institute or the bureau involved. Personnel in domestic travel status who are performing excepted functions may continue to do so. Assuming that a valid obligation has been established prior to midnight on January 19, 2018, personnel in non-excepted positions should continue to receive per diem domestically and abroad. See Section VIII for more information regarding obligations and disbursements.

Personnel on home leave will be considered non-excepted and placed in furlough status unless they are notified by post that their position is excepted and post asks them to return to post for the needs of the service. Personnel in furlough status report their time as furlough (FR) and not home leave (HL). Personnel that

Chapter 2

were supposed to be on home leave but are furloughed instead will follow the guidance for furloughed employees. The employee should contact post to discuss what travel actions post would like them to take. The travel to/from the United States will be considered as the home leave being taken and if the amount of home leave taken and reported is below the minimum level, a waiver will be requested due to the needs of the service.

V. Training

In accordance with the shutdown plan, Foreign Service Institute (FSI), FSI field offices, and all other domestic facilities will be closed, except those portions of the Diplomatic Security Training Center and FSI's National Foreign Affairs Training Center campus housing employees performing excepted functions. Crisis Management Training and Antiterrorism Assistance Training that has already started at abroad posts may continue if posts are open, subject to the approval of the Chief of Mission since this pertains to the safety and security of personnel. Domestically, the following courses will continue as scheduled since they pertain to the safety and security of personnel going to Afghanistan, Iraq and other posts of heightened danger: Afghanistan Familiarization (RS415); Iraq Familiarization (FT610); for those deploying to posts where it is mandatory, the Diplomatic Security Training Foreign Affairs Counter Threat Course (CT650); and Green Team Training and In-Service Training for Mobile Security and the High Threat Operations Course for Agents going to High Threat Environments.

All other class attendance, domestically and abroad, will be suspended. This applies to all training, except as noted above, whether conducted by Department employees or contractors. Other security-related training may be continued subject to the specific written approval of the Office of the Under Secretary for Management.

Those domestic personnel in training who are designated as necessary to perform "excepted functions" should return to their positions; those not so designated will be furloughed. Personnel normally working abroad who are in training in the United States will be furloughed. Personnel in domestic travel status who are not performing excepted functions should make arrangements to return or deploy to their duty site as soon as told to do so by their bureau senior leadership. Personnel in domestic travel status who are performing excepted functions may continue to do so.

Similarly, employees enrolled in training conducted by entities outside the Department should not attend class and should be treated as stated above.

See Section IV on travel for questions regarding per diem funding for personnel in long-term training.

VI. Allowances under the Standardized Regulations

The Chief of Mission may authorize the use of representational funds on an exceptional basis when necessary for activities essential to national security, including the conduct of foreign affairs essential to national security. While the Department cannot pay invoices for representational events during a shutdown, personnel should seek reimbursement once appropriations have been restored. See section XI.

Allowances for persons in excepted positions will continue, except for the following allowances, which will be suspended:

- Representation Allowance
- Education Allowance
- Educational Travel will be provided only if necessary for human safety (e.g., if the school closes for a holiday and the students must vacate the dorm)

For persons in non-excepted positions, allowances related to the protection of life or property will continue. This means that, for persons in non-excepted positions the following allowances will continue during a furlough:

- Housing and utilities abroad
- Living Quarters Allowance
- Post Allowance (COLA)
- Home Service Transfer Allowance
- Foreign Transfer Allowance
- Temporary Quarters Subsistence Allowance (TQSA)
- Separate Maintenance Allowance
- Subsistence Expense Allowance (paid in the event of an evacuation)
- Extraordinary Quarters Allowance

For persons in non-excepted positions, the following allowances will not be paid during a furlough:

- Post Differential
- Danger Pay (We assume that all or nearly all positions at danger pay posts would be excepted.)
- Representation Allowance
- New Education Allowance

Chapter 2

- Educational Travel will be provided, as is the case for persons in excepted positions, only if necessary for human safety (e.g., if the school closes for a holiday and the students must vacate the dorm).

These instructions assume a short furlough. Should a furlough continue beyond a temporary period, the Department will provide further guidance.

VII. Contracts and Grants

As the Government Accountability Office has long recognized, funding gaps due to lapses in appropriations raise particularly thorny issues in the area of contractual commitments, where generally applicable Anti-Deficiency Act requirements may be in apparent conflict with orderly shutdown activities and with continuation of excepted functions. The following guidance is directed toward providing a framework for consistent treatment of contractual commitments by Department contracting activities and posts abroad that is consistent with the overall Department shutdown plan and that will minimize ultimate costs and disruptions. The Working Capital Fund shall continue operating as long as carryover balances are available.

A. Previously awarded contracts that continue in performance during a lapse in appropriations and have adequate funding previously obligated to permit continued performance during a shutdown period should generally be permitted to continue unless the post/contracting activity cannot provide adequate oversight of contract performance during a shutdown period by excepted employees. If adequate monitoring of contractor performance cannot be provided, suspension or reduction in performance of non-excepted services should be considered if authorized by the terms of the contract or if the contractor will negotiate such a suspension or reduction. Care should be taken not to incur unnecessary costs or jeopardize the Government's future contractual rights by unilateral stop work orders or directions to reduce the scope of work that are not authorized by the terms of the contract or that will cause the contractor to incur costs that could subsequently be charged to the government. If circumstances require further guidance, consult L/BA per paragraph G below.

B. For domestic offices, previously awarded contracts and leases that would, in the absence of funding, require renewal or modification during a lapse in appropriations to obligate additional funds for continued performance may be authorized to continue only if necessary to support excepted activities authorized for continuance under the Department's shutdown plan or if genuinely needed to protect Government property or human safety. The necessity for such renewals or modifications must be certified to the contracting officer by the Deputy Chief of Mission at post, the Principal Deputy Assistant Secretary (in the regional and functional bureaus), or the Assistant Secretary (in the management bureaus) with a written statement of the basis for such necessity. Post Financial Management Officers and bureau Executive Directors must certify that funds are available within the annual financial plan targets provided by BP and F. Incurring unfunded

Chapter 2

obligations for such services during a funding gap does not violate the Anti-Deficiency Act, but payment of such unfunded obligations must be deferred until appropriations are provided by the Congress.

C. New contractual commitments during a lapse in appropriations may be made only if necessary to support excepted activities authorized for continuance under the Department's shutdown plan or if genuinely needed to protect Government property or human safety. The necessity for such unfunded commitments must be certified to the contracting officer by the Deputy Chief of Mission, the Principal Deputy Assistant Secretary, or Assistant Secretary (as previously described) with a written statement on the basis for such necessity. Additionally, Financial Management Officers and Executive Directors must certify that funds are available within the annual financial plan targets provided by BP and F. Unfunded contractual commitments should be kept to the minimum in cost and duration that will meet the essential need.

D. You should not enter into any new grants or Federal Assistance agreements during the period of a lapse in appropriations. Previously awarded grants or Federal Assistance agreements that continue in performance during a lapse in appropriations, and have adequate funding previously obligated to permit continued performance during a shutdown period, should generally be permitted to continue unless the post/assistance activity cannot provide adequate oversight of award performance during a shutdown period by excepted employees. If adequate monitoring of recipient performance cannot be provided, suspension or reduction in performance services should be considered by the Grants Officer if authorized by the terms of the award or if the recipient will negotiate such a suspension or reduction. Care should be taken not to incur unnecessary costs or jeopardize the government's future rights by unilateral stop-work orders or directions to reduce the scope of work that will cause the recipient to incur costs that could subsequently be charged to the government. If circumstances require further guidance, consult L/LFA per paragraph H below.

E. You should suspend unfunded non-real estate leases during the period of a funding lapse, unless necessary to support excepted activities. You may continue previously awarded construction and renovation projects for which adequate funds were obligated unless adequate supervision cannot be provided, in which case consider suspension of work if contractually permitted and practically feasible. Bureau of Overseas Buildings Operations (OBO) funded leases and real estate purchases may continue under regular rules and procedures.

Chapter 2

F. You should treat foreign national personnel with personal services contracts or personal service agreements in the same manner as Foreign Service national direct hires where local labor law necessitates. You should treat U.S. personal services contractors in the same manner as similarly situated Civil Service or Foreign Service employees, retaining only if necessary to perform an excepted function.

G. You should consult L/BA, preferably by e-mail or facsimile (703-516-1547) with contracting questions arising in connection with guidance in this section.

H. You should contact L/LFA, preferably by email, with Federal Assistance questions arising in connection with guidance in this section.

VIII. Obligations and Disbursements

Obligations

During any absence of FY 2018 appropriations, obligations against lapsed appropriations may continue to be incurred for excepted activities.

During a lapse in appropriations, the Department has legal authority to incur obligations to continue excepted activities. However, the incurred obligations should not be formally recorded (posted) in our accounting systems as there are no appropriations against which to record the obligations. Bureaus and posts must ensure that such obligations are not recorded in either RFMS or GFMS or sent to CGFS to be recorded in official accounts.

Per OMB guidance, payments cannot be disbursed against lapsed appropriations for obligations incurred after the lapse begins. Disbursements can be made for obligations incurred before the lapse period.

All obligations and obligating documents issued during the lapse period must be approved by the Deputy Chief of Mission, a Principal Deputy Assistant Secretary in the regional and functional bureaus, or an Assistant Secretary in the Management Bureaus, and have the following statement affixed and signed by the DCM, Assistant Secretary, or Principal Deputy Assistant Secretary, as applicable: "This obligation is necessary to carry out excepted activities in the absence of an appropriation or to perform activities for which funds are otherwise available."

Bureaus and posts should maintain detailed records of all obligations incurred that cannot be recorded at this time. As soon as obligation authority is obtained, all obligations should be recorded immediately.

Disbursements

Bureaus and posts can certify and CGFS can make payments against valid obligations established against prior year annual appropriations (including last Fiscal Year), and for current Fiscal Year obligations established through the end of any applicable Continuing Resolution. Bureaus and posts also can certify and authorize payments against valid obligations in no-year or multi-year appropriations, trust funds, other permanent appropriations, and the Working

Chapter 2

Capital Fund for which funding remains available. These payments should be routinely sent to CGFS for processing or entered by posts into RFMS.

Bureaus and posts cannot certify and authorize payments against Department of State obligations incurred after a lapse in appropriations against any current Fiscal Year lapsed single year appropriations. Again, obligations can be incurred for excepted activities but cannot be posted (formally recorded) in the Department's financial systems.

Specific Situations

The following are typical bureau/post obligation/payment categories and how they should be handled:

1. LE staff pay/allowances: Standard procedures to process LE staff payroll must be followed. Under no circumstances should alternate means be used to pay LE staff salaries, such as using petty cash. As per the above general guidance for obligations after a lapse in appropriations, no obligations for payroll after that date should be recorded on official accounts or in RFMS and GFMS, even for excepted activities. More detailed guidance on submitting time and attendance during the period of the lapse will be provided prior to the deadline for the next submission of time and attendance.

2. American Salaries, Benefits, and Allowances: While obligations may continue to be established for employees on US-based salary schedules performing "excepted" and shutdown activities, payments for salaries and allowances may only be made for services rendered prior to the lapse in appropriations.

3. Travel: Only travel in fulfillment of excepted activities can be initiated after a lapse of appropriations. Per guidance above, even in cases of travel in this category, obligations made after any lapse of appropriations should not be recorded on official bureau or post accounts even though obligations have been incurred. Blanket travel orders issued prior to the lapse in appropriations are not valid during the lapse period, unless in the case of travel abroad, travel commenced or any cost was incurred for that travel prior to the shutdown. No travel advances can be issued unless the obligation for travel abroad was incurred prior to the lapse in appropriations. Travel voucher reimbursements can be processed only if against obligations incurred and recorded for prior years, or for the current Fiscal Year (if obligated prior to the lapse in appropriations) multi-year or no-year appropriations for which funds remain available. Travelers who hold Citibank Travel Cards may

Chapter 2

charge advances against these cards for any approved trips as travel card advance charges do not create advances to official accounts. As part of GSA Smart Pay cards, Travel Cards will continue to function normally and banks will continue to provide service. Cardholders, as usual, should contact the bank customer service organization should they experience problems with their cards.

4. Utilities: As with other categories of payments, utility payments for obligations established prior to the lapse in appropriations can be processed and sent to CGFS for payment or entered in RFMS. Obligations for utility costs after the lapse in appropriations should not be recorded even though incurred, and utility payments for periods after that cannot be made from lapsed appropriations. Posts confronted with any emergencies in this regard should contact the Department as soon as possible (see paragraph 13 below).

5. OBO Allotment Activities: Since OBO activities abroad (e.g., rents, maintenance and repair, fire/safety and capital projects) are paid from the no-year OBO appropriation, these activities can be obligated and paid if the post has sufficient funds in its OBO allotment. Salaries for facility managers and OBO direct-hire project staff at post are funded domestically from the no-year OBO appropriation; therefore, those personnel will continue to report to work and perform their duties. Salaries for locally-hired OBO project staff are funded from post-held OBO allotments and can therefore be obligated and paid as long as post has sufficient funds in its allotment.

6. Representation: Reimbursements for representation events held prior to the lapse in appropriations, may be certified and payments processed if funds are available within bureau or post representation allotment. Representational events taking place after the lapse of appropriations can only be reimbursed: 1) if they have been certified by the COM as required for activities essential to national security; and, 2) once the obligation has been legally posted in the Department's financial system.

7. Purchase Order Payments: Generally, purchase order obligations and payments are to be governed by the above guidance. Obligations for purchase orders prior to the lapse in appropriations should have been recorded. Payments against these obligations can be processed. Obligations incurred for purchase orders after the lapse in appropriations, for excepted activities against lapsed current Fiscal Year appropriations cannot be recorded and payments against these obligations cannot be made.

8. Petty Cash Payments: Similar guidance applies to all categories of miscellaneous petty cash payments. A voucher can be paid if the obligation supporting it was incurred prior to the lapse in appropriations. For example, a petty cash reimbursement for taxi fares incurred prior to the lapse in appropriations can be paid. No petty cash reimbursement can be made for taxi fares or other purposes incurred after the lapse in appropriations unless against an available multi-year or a no-year appropriation, trust funds, other permanent appropriations, and the Working Capital Fund. Please follow guidance in paragraph 13 for cash payments deemed absolutely necessary. The absence of appropriations does not affect accommodation exchange.

9. Collections: Embassy cashiers can continue to process all collections normally.

10. Certifying Officer Responsibility: Post financial management and certifying officers have the responsibility to ensure that only authorized obligations are recorded, and only payments against authorized obligations are certified for payment and disbursement. Edits in our financial systems abroad should ensure that payments are not processed unless a valid obligation has been recorded. Posts should not de-obligate funds previously obligated prior to the lapse in appropriations and re-obligate to new obligations after the lapse in appropriations minus one.

11. Absolutely Necessary Payments: To reiterate, and consistent with OMB guidance, we have authority to incur obligations but cannot make payments for excepted activities after the lapse in appropriations. Because our accounting system pays for incurred obligations, we cannot post (record) obligations due to the lapse of appropriations even though obligations have been incurred, nor can we make payments against the incurred but not recorded obligations for current Fiscal Year lapsed appropriations. If it is necessary to make payments in emergency situations (e.g., to safeguard life and property), the bureau or embassy should send a memo or cable, respectively, on a case-specific basis to request use of funds that BP determines may be available for such purposes. Each request should provide details of the date the funds are needed, the amount, the justification, and any other relevant information. Requests of this type should be limited to extreme cases.

12. Repatriation Loans: Post authority to expend up to \$2,000 per applicant without Department approval is temporarily rescinded. If a post determines that a repatriation loan is necessary during the period of a lapse in appropriations, the

Chapter 2

post should cable CA/OCS and CA's Comptroller to request funding as mentioned in paragraph 11 above.

13. Emergency Medical Services: If the concurrence of MED is received, emergency medical travel and services obligations can be incurred but not recorded. Accordingly, payments against such obligations cannot be made. Please coordinate with MED and follow guidance in paragraph 11 in emergency situations where payment is required immediately. For medical services funding requests the post should cable MED and CGFS – USOFFICE Global Financial Services (not the regional bureaus).

14. Other Agencies: For other agencies for which the embassy makes disbursements or processes payments only, Department of State officials must rely on other agency approvals to ensure compliance with the above-described procedures and funds availability. For other agencies for which the embassy provides accounting as well as payment services, the obligation and payment guidance in this cable applies.

IX. Time and Attendance Reporting

During the furlough period (during the lapse in appropriations), employees must be either (1) performing excepted activities (or otherwise authorized to work), or (2) furloughed. They therefore cannot be in a paid leave status (e.g., annual leave, sick leave, other paid leave or compensatory time off) during that period. Normal hours worked during the furlough period by excepted employees should be reported as regular duty hours.

If an excepted employee had an emergency which precluded them from working during this period, their time should be reported as a furloughed employee for that time period. In the case of employees who were on approved leave without pay during the lapse of appropriations, these absences must continue to be charged to leave without pay.

Reporting time for the first workday of a lapse and subsequent days with a lapse in appropriations: You should give special attention to reporting T&A for employees for the first workday of a lapse since the shutdown may occur during the workday and non-excepted employees would work varying periods of time before departing on furlough. A determination should be made on the amount of time each employee worked on the first furlough day – defined as your first scheduled workday after the lapse in appropriations. The remaining period of time in a furloughed employee's duty day would then be considered furlough time. Specific directions for T&A coding will be provided directly to timekeepers by CGFS.

X. Speech-Making and Media Engagement

As a general rule, all speeches to public audiences should be cancelled and no invitations to give speeches to public audiences should be accepted during the shutdown period. If you believe there are exceptional reasons to honor an existing speech commitment or to accept a speaking invitation, you should contact the Public Affairs (PA) Special Assistants at 202-647-6607 for guidance. No speeches to public audiences may be made during the shutdown period without explicit approval from the PA Principal Deputy Assistant Secretary.

The Bureau of Public Affairs may need to communicate with the media, via on-camera or off-camera briefings and/or the release of statements via traditional or social media means, for events and issues involving the safety of human life or the protection of property, or those necessarily related to national security, including the conduct of foreign affairs essential to the national security (“excepted activities”). This would include direct support to the Secretary of State for travel related to national security-related issues, and any news media and transcription support that would entail. Approval for such activities will rest with the Bureau Assistant Secretary or Principal Deputy Assistant Secretary.

Non-emergency social media operations outside of flagship social media accounts must cease. Department flagship accounts managed by the Bureau of Public Affairs may operate in support of excepted activities.

XI. Representation Events

Domestic Representation: As a general rule, no domestic representation events should be held during the shutdown period. Events already scheduled should be cancelled and no new events planned until the shutdown is over. If you believe there are truly exceptional circumstances that merit a representation event being held during the shutdown period, you should contact M/EDCS for approval.

Representation Abroad: As a general rule, no representation events should be held abroad during a shutdown period. Chiefs of Mission (COMs) may authorize a representational event abroad only if it is necessary to support excepted activities. COMs should consider the perception of a representational event during a Department shutdown.

The text of the Notice of Furlough for Civil Service employees is as follows: [Ensure that an SF-8 is attached to this notice]

In the absence of either a current Fiscal Year appropriation or a continuing resolution for the Department of State, no further financial obligations may be incurred by the Department, except for those related to the orderly suspension of the Department's operations or performance of excepted activities as defined in the Office of Management and Budget Memorandum for Heads of Executive Departments and Agencies dated November 17, 1981 and subsequent guidance. You are being placed in a furlough status effective as of the date of this letter because your position is not engaged in one of the identified excepted functions as defined by the Office of Management and Budget. We would hope that the furlough (i.e., non-pay, non-duty status) will not exceed 30 days. You should monitor public broadcasts and when you hear that a continuing resolution or a current Fiscal Year appropriation for the Department has been approved, you will be expected to return to work on your next regular duty day. This action is being taken because of a sudden emergency requiring curtailment of the Department's activities; therefore, no advance notification is possible. The customary 30-day advance notice period and opportunity to answer are suspended under the provisions of 5 CFR 752.404(d)(2). The 30-day advance notice otherwise required by 5 CFR 359.806(a) for Senior Executive Service (SES) career appointees (other than reemployed annuitants) may be shortened or waived.

If other employees are being retained in your competitive level or competitive area, they are required for orderly suspension of our operations or they are performing one of the excepted activities defined in the OMB memorandum.

During the furlough period, you will be in a non-pay, non-duty status. Also, during the furlough, you will not be permitted to serve as an unpaid volunteer, and therefore you must remain away from your workplace unless and until recalled. In addition, a furloughed employee may not work remotely by, for example, using a fob, Blackberry, or other Department-issued mobile device. You should turn off all Department-provided mobile devices. You may, however, be permitted into the building for personal business at the credit union or to obtain forgotten items from your office. Any paid leave (annual, sick, court, etc.) approved for use during the furlough period is cancelled.

Employees who have completed a probationary or trial period or 1 year of current continuous employment in the competitive service under other than a temporary appointment may appeal this action to the Merit Systems Protection

Attachment A

Board (MSPB). Employees in the excepted service who have veterans preference may appeal to MSPB if they have completed 1 year of current continuous service in the same or similar positions as the one they now hold. Employees in the excepted service who do not have veterans preference and who are not serving a probationary or trial period under an initial appointment pending conversion to the competitive service may appeal to MSPB if they have completed 2 years of current continuous service in the same or similar positions in an Executive agency under other than a temporary appointment limited to 2 years or less.

Appeal Rights

If you are not sure which of the following appeal rights apply to you, please review your SF-50 and/or contact your Executive Director or Management Office.

I. If you are a probationary employee, the following appeal rights apply:

1. Merit Systems Protection Board

You have limited rights to file an appeal of this action with the Merit Systems Protection Board (MSPB). You may appeal this action only if you believe that it is (a) motivated by partisan political reasons or marital status; or (b) based on a pre-appointment reason, whether the agency failed to take required procedures. You must file your appeal within 30 calendar days after the effective date of the action or receipt of this notice, whichever is later. If you do not file an appeal within the 30-day period, it will be dismissed as untimely filed unless good reason for the delay is shown. If you wish to file an appeal, you may obtain information about the appeals process and a copy of the appeals form from the MSPB website at <http://www.mspb.gov/appeals/appeals.htm>. The MSPB requires an appeal to be filed with the MSPB regional or field office serving the area where your duty station was located when the action was taken. The MSPB also offers the option of electronic filing at <https://e-appeal.mspb.gov/>. If you wish to file an appeal and you do not have access to the internet, contact your Executive Office to obtain a copy of the MSPB regulations and appeal form and the address of the MSPB regional office having jurisdiction. For employees in the Washington, D.C. area, appeals to the MSPB should be addressed to:

Merit Systems Protection Board
Washington, DC Regional Office
1800 Diagonal Road, Suite 205
Alexandria, VA 22314-2840

Attachment A

For employees outside of the Washington, D.C. area, please contact your Executive Office for information about the address of the appropriate MSPB field office. If you choose to appeal to the MSPB, the MSPB should send the Acknowledgment Order and appeal to the following Department point of contact:

Alexandra H. Perina

Assistant Legal Adviser for Employment Law

Office of the Legal Adviser (L/EMP)

U.S. Department of State

2201 C Street, NW, Room 5425

Washington, D.C. 20520

Fax: 202-647-6794

Telephone No.: 202-647-4646

2. Office of Special Counsel

If you feel this action is being taken as a result of reprisal for making a protected whistleblowing disclosure or for engaging in any of the protected activities outlined in 5 U.S.C. § 2302(b)(9), you may raise the matter by either filing a MSPB appeal (if the action is otherwise appealable to the MSPB, as outlined above) or by filing a complaint with the Office of Special Counsel (OSC), followed by (for claims of whistleblower reprisal or claims relating to protected activities under 5 U.S.C. § 2302(b)(9)(A)(i), (B), (C), or (D)) an Individual Right of Action (IRA) appeal to the MSPB. If you elect to file a complaint with OSC prior to filing an appeal with the MSPB, you will be deemed to have elected corrective action under subchapters II and III of 5 U.S.C. Chapter 12, which can be followed by an IRA appeal to the MSPB; your IRA appeal in such a case is solely limited to resolving the claim(s) of reprisal for whistleblowing or other protected activity. For further information regarding your rights to seek corrective action, please refer to 5 U.S.C. § 1221 and 5 C.F.R. §§ 1209.2 & 1209.5.

Attachment A

3. Unlawful Discrimination

If you believe this action was motivated by unlawful discrimination based on race, color, religion, sex, national origin, age, disability, or genetic information and the action is otherwise appealable to the MSPB, as outlined above, you may raise such allegations either in a mixed case appeal with the MSPB or in a mixed case complaint with the Department's Office of Civil Rights. You may not file both.

A mixed case appeal is filed with the MSPB and must be made within the timeframe explained above. A mixed case EEO complaint is initiated by contacting an EEO counselor within 45 days of the effective date of this action and filing a formal complaint of discrimination after EEO counseling is completed. For further information on filing a mixed case appeal or a mixed case EEO complaint, please refer to the MSPB's regulations at 5 C.F.R. § 1201.151 et seq. and the EEOC's regulations at 29 C.F.R. § 1614.302.II.

II. If you are not a probationary employee and are not covered by a Negotiated Grievance Procedure, the following appeal rights apply:

1. Merit Systems Protection Board

You have a right to appeal this action to the Merit Systems Protection Board (MSPB) within 30 calendar days after the effective date of the action or receipt of this decision, whichever is later. If you do not file an appeal within the 30-day period, it will be dismissed as untimely filed unless good reason for the delay is shown. If you wish to file an appeal, you may obtain information about the appeals process and a copy of the appeals form from the MSPB website at <http://www.mspb.gov/appeals/appeals.htm>. The MSPB requires an appeal to be filed with the MSPB regional or field office serving the area where your duty station was located when the action was taken. The MSPB also offers the option of electronic filing at <https://e-appeal.mspb.gov/>. If you wish to file an appeal and you do not have access to the internet, contact your Executive Office to obtain a copy of the MSPB regulations and appeal form and the address of the MSPB regional office having jurisdiction. For employees in the Washington, D.C. area, appeals to the MSPB should be addressed to:

Merit Systems Protection Board
Washington, DC Regional Office
1800 Diagonal Road, Suite 205
Alexandria, VA 22314-2840

Attachment A

For employees outside of the Washington, D.C. area please contact your Executive Office for information about the address of the appropriate MSPB field office. If you choose to appeal to the MSPB, the MSPB should send the Acknowledgment Order and appeal to the following Department point of contact:

Alexandra H. Perina

Assistant Legal Adviser for Employment Law

Office of the Legal Adviser (L/EMP)

U.S. Department of State

2201 C Street, NW, Room 5425

Washington, D.C. 20520

Fax: 202-647-6794

Telephone No.: 202-647-4646

2. Office of Special Counsel

If you feel this action is being taken as a result of reprisal for making a protected whistleblowing disclosure or for engaging in any of the protected activities outlined in 5 U.S.C. § 2302(b)(9), you may raise the matter by either filing a MSPB appeal as outlined above or by filing a complaint with the Office of Special Counsel (OSC), followed by (for claims of whistleblower reprisal or claims relating to protected activities under 5 U.S.C. § 2302(b)(9)(A)(i), (B), (C), or (D)) an Individual Right of Action (IRA) appeal to the MSPB. If you elect to file a complaint with OSC prior to filing an appeal with the MSPB, you will be deemed to have elected corrective action under subchapters II and III of 5 U.S.C. Chapter 12, which can be followed by an IRA appeal to the MSPB; your IRA appeal in such a case is solely limited to resolving the claim(s) of reprisal for whistleblowing or other protected activity. For further information regarding your rights to seek corrective action, please refer to 5 U.S.C. § 1221 and 5 C.F.R. §§ 1209.2 & 1209.5.

3. Unlawful Discrimination

Attachment A

If you believe this action was motivated by unlawful discrimination based on race, color, religion, sex, national origin, age, disability, or genetic information, you may raise such allegations either in a mixed case appeal with the MSPB or in a mixed case complaint with the Department's Office of Civil Rights. You may not file both.

A mixed case appeal is filed with the MSPB and must be made within the timeframe explained above. A mixed case EEO complaint is initiated by contacting an EEO counselor within 45 days of the effective date of this action and filing a formal complaint of discrimination after EEO counseling is completed. For further information on filing a mixed case appeal or a mixed case EEO complaint, please refer to the MSPB's regulations at 5 C.F.R. § 1201.151 et seq. and the EEOC's regulations at 29 C.F.R. § 1614.302.

III. If you are not a probationary employee and are covered by a Negotiated Grievance Procedure, the following appeal rights apply:

1. Merit Systems Protection Board

You have a right to appeal this action to the Merit Systems Protection Board (MSPB) within 30 calendar days after the effective date of the action or receipt of this decision, whichever is later. If you do not file an appeal within the 30-day period, it will be dismissed as untimely filed unless good reason for the delay is shown. If you wish to file an appeal, you may obtain information about the appeals process and a copy of the appeals form from the MSPB website at <http://www.mspb.gov/appeals/appeals.htm>. The MSPB requires an appeal to be filed with the MSPB regional or field office serving the area where your duty station was located when the action was taken. The MSPB also offers the option of electronic filing at <https://e-appeal.mspb.gov/>. If you wish to file an appeal and you do not have access to the internet, contact your Executive Office to obtain a copy of the MSPB regulations and appeal form and the address of the MSPB regional office having jurisdiction. For employees in the Washington, D.C. area, appeals to the MSPB should be addressed to:

Merit Systems Protection Board
Washington, DC Regional Office
1800 Diagonal Road, Suite 205
Alexandria, VA 22314-2840

Attachment A

For employees outside of the Washington, D.C. area, please contact your Executive Office for information about the address of the appropriate MSPB field office. If you choose to appeal to the MSPB, the MSPB should send the Acknowledgment Order and appeal to the following Department point of contact:

Alexandra H. Perina

Assistant Legal Adviser for Employment Law

Office of the Legal Adviser (L/EMP)

U.S. Department of State

2201 C Street, NW, Room 5425

Washington, D.C. 20520

Fax: 202-647-6794

Telephone No.: 202-647-4646

2. Office of Special Counsel

If you feel this action is being taken as a result of reprisal for making a protected whistleblowing disclosure or for engaging in any of the protected activities outlined in 5 U.S.C. § 2302(b)(9), you may raise the matter by either filing a MSPB appeal as outlined above or by filing a complaint with the Office of Special Counsel (OSC), followed by (for claims of whistleblower reprisal or claims relating to protected activities under 5 U.S.C. § 2302(b)(9)(A)(i), (B), (C), or (D)) an Individual Right of Action (IRA) appeal to the MSPB. If you elect to file a complaint with OSC prior to filing an appeal with the MSPB, you will be deemed to have elected corrective action under subchapters II and III of 5 U.S.C. Chapter 12, which can be followed by an IRA appeal to the MSPB; your IRA appeal in such a case is solely limited to resolving the claim(s) of reprisal for whistleblowing or other protected activity. For further information regarding your rights to seek corrective action, please refer to 5 U.S.C. § 1221 and 5 C.F.R. §§ 1209.2 & 1209.5.

3. Unlawful Discrimination

Attachment A

If you believe this action was motivated by unlawful discrimination based on race, color, religion, sex, national origin, age, disability, or genetic information, you may raise such allegations either in a mixed case appeal with the MSPB or in a mixed case complaint with the Department's Office of Civil Rights. You may not file both.

A mixed case appeal is filed with the MSPB and must be made within the timeframe explained above. A mixed case EEO complaint is initiated by contacting an EEO counselor within 45 days of the effective date of this action and filing a formal complaint of discrimination after EEO counseling is completed. For further information on filing a mixed case appeal or a mixed case EEO complaint, please refer to the MSPB's regulations at 5 C.F.R. § 1201.151 et seq. and the EEOC's regulations at 29 C.F.R. § 1614.302.

4. Negotiated Grievance Procedure

A. For employees covered by NFFE:

Since you occupy a position in the bargaining unit for which the National Federation of Government Employees (NFFE), Local 1998, holds exclusive recognition, you are also entitled to grieve this decision under the provisions of Articles 20 and 24 of the Negotiated Labor-Management Agreement between the Department of State and NFFE. If you decide to submit a grievance, you must do so within 30 calendar days from the effective date of the action. The name of the union president is Rob Arnold; he can be reached at (206) 346-2905. Your grievance must be submitted to Brenda S. Sprague, the Deputy Assistant Secretary for Passport Services (CA/PPT).

NOTE REGARDING ELECTION OF REMEDIES:

Pursuant to statute and the terms of the Negotiated Labor Management Agreement, you may select only one of the following avenues for redress: (1) file an appeal to the MSPB; (2) file a formal EEO complaint with OCR (3) file a complaint with OSC, which can be followed by an IRA appeal filed with the MSPB; or (4) file a grievance under Articles 20 and 24 of the Negotiated Labor-Management Agreement. An election is deemed to have been made based on which of these four (4) actions you file first.

Please note that if you file a formal EEO complaint with OCR, you have not waived your right to file a complaint with OSC, which can be followed by an IRA appeal filed with the MSPB.

Attachment A

The sole exception to this election of remedies is if you believe that this action was motivated, in whole or in part, by unlawful discrimination based on race, color, religion, sex, national origin, age, disability, marital status, or political affiliation and you choose to file a grievance under the Negotiated Labor Management Agreement, you have the right to request review of a final decision on the grievance by the MSPB or the EEOC. Your request for review by the MSPB must be filed within 30 calendar days of the date you received the final decision (or within 35 calendar days of the date the final decision is issued, if you received it more than 5 days after the date of issuance). A full description of your right to pursue a grievance and request Board review of a final decision on the grievance is found at 5 U.S.C. § 7121 and § 7702.

B. For employees covered by AFGE (non-professional bargaining unit)

Since you occupy a position in the bargaining unit for which the American Federation of Government Employees (AFGE), Local 1534, holds exclusive recognition, you are also entitled to grieve this decision under the provisions of Articles 20 and 21 of the Negotiated Labor-Management Agreement between the Department of State and AFGE. If you decide to submit a grievance, you must do so within 30 calendar days from the effective date of the action.

NOTE REGARDING ELECTION OF REMEDIES:

Pursuant to statute and the terms of the Negotiated Labor Management Agreement, you may select only one of the following avenues for redress: (1) file an appeal to the MSPB; (2) file a complaint with OSC, which can be followed by an IRA appeal filed with the MSPB; or (3) file a grievance under Articles 20 and 21 of the Negotiated Labor-Management Agreement. An election is deemed to have been made based on which of these three (3) actions you file first.

IV. Career SES

Career SES appointees (except reemployed annuitants) who believe requirements of 5 CFR part 359, subpart H, or the agency's procedures have not been correctly applied may also appeal to MSPB as described under parts I or II above. Career SES appointees may inspect the regulations and records pertinent to this action. Please contact your Executive Director or Management Office to schedule a time and location for such inspection.

We recognize the difficult financial implications of any furlough, no matter how limited its length. We will make every effort to keep you informed as

Attachment A

additional information regarding the agency funding level becomes available. If you have questions, contact your bureau Executive Director or Management Officer.

Deciding Official

Date

The text of the Notice of Furlough for Foreign Service employees is as follows: [Ensure that an SF-8 is attached to this notice]

In the absence of either a current Fiscal Year appropriation or a continuing resolution for the Department of State, no further financial obligations may be incurred by the Department, except for those related to the orderly suspension of the Department's operations or performance of excepted activities as defined in the Office of Management and Budget Memorandum for Heads of Executive Departments and Agencies dated November 17, 1981 and subsequent guidance. You are being placed in a furlough status effective as of the date of this letter because your position is not engaged in one of the identified excepted functions as defined by the Office of Management and Budget. We would hope that the furlough (i.e., non-pay, non-duty status) will not exceed 30 days. You should monitor public broadcasts and when you hear that a continuing resolution or a current Fiscal Year appropriation for the Department has been approved by Congress and signed by the President, you will be expected to return to work on your next regular work day.

This action is being taken because of a sudden emergency requiring curtailment of the Department's activities.

If other employees are being retained, they are required for orderly suspension of our operations or they are performing one of the excepted activities defined in the OMB memorandum.

When you are on furlough, you will be in a non-pay, non-duty status. Also, during the furlough, you will not be permitted to serve as an unpaid volunteer, and therefore you must remain away from your workplace unless and until recalled. In addition, a furloughed employee may not work remotely by, for example, using a fob, Blackberry, or other Department-issued mobile device. You should turn off all Department-provided mobile devices. You may, however, be permitted into the building for personal business at the credit union or to obtain forgotten items from your office. Any paid leave (annual, sick, court, etc.) approved for use during the furlough period is cancelled.

If you wish to file a grievance regarding this action under the Foreign Service grievance system, you may do so pursuant to the procedures set out in 3 FAM 4400. If you require information concerning the Department's grievance procedures, you may contact the Grievance Staff, HR/G, (202) 261-8110.

Attachment B

If you feel this action is being taken as a result of reprisal for making a protected whistleblowing disclosure or for engaging in any of the protected activities outlined in 5 U.S.C. § 2302(b)(9), you may file a complaint with the Office of Special Counsel (OSC), followed by (for claims of whistleblower reprisal or claims relating to protected activities under 5 U.S.C. § 2302(b)(9)(A)(i), (B), (C), or (D)) an Individual Right of Action (IRA) appeal to the MSPB. For further information regarding your rights to seek corrective action, please refer to 5 U.S.C. § 1221 and 5 C.F.R. §§ 1209.2 & 1209.5.

If you believe this action was motivated by unlawful discrimination based on race, color, religion, sex, national origin, age, disability, or genetic information, you may raise such allegations in a complaint with the Department's Office of Civil Rights. An EEO complaint is initiated by contacting an EEO counselor within 45 days of the effective date of this action and filing a formal complaint of discrimination after EEO counseling is completed. For further information on filing an EEO complaint, please refer to the EEOC's regulations at 29 C.F.R. § 1614.105.

You may have additional appeal rights to the Merit Systems Protection Board (MSPB) in the event that any furlough extends more than 30 days. 5 C.F.R. § 351.901.

We recognize the difficult financial implications of any furlough, no matter how limited its length. We will make every effort to keep you informed as additional information regarding the agency funding level becomes available. If you have questions, contact your bureau Executive Director or Post Management Officer.

Deciding Official

Date

SAMPLE NOTICE OF FURLOUGH DURING INTERMITTENT ABSENCES TO EXCEPTED EMPLOYEE [Ensure that an SF-8 is attached to this notice]

In the absence of either a Fiscal Year (FY) 2018 appropriation, or a continuing resolution for the Department of State, no new financial obligations may be incurred by the Department for functions funded through annual appropriations, except with respect to certain personnel who are otherwise authorized to continue to work.

As you are aware, as an employee who has been excepted from furlough and continued to work during the shutdown, you are required to work on those days you would normally be scheduled to work. Because of the operation of the shutdown furlough rules, however, we must place you in a furlough status for the following dates: [state applicable date(s)]. As an excepted employee, you are expected to return to work on your next regularly scheduled workday following January 19, 2018.

This action is being taken because of a sudden emergency requiring curtailment of the Department's activities; therefore, no advance notification is possible. The customary 30-day advance notice period and opportunity to answer are suspended under the provisions of 5 CFR 752.404(d)(2). The 30 day-advance notice otherwise required by 5 CFR 359.806(a) for Senior Executive Service (SES) career appointees (other than reemployed annuitants) may be shortened or waived. If employees are being retained in your competitive level or competitive area, they are required for orderly suspension of our operations or they are performing one of the excepted activities defined in the OMB memorandum.

During the furlough period, you will be in a non-duty, non-pay status. Also, during the furlough, you will not be permitted to serve as an unpaid volunteer, and therefore you must remain away from your workplace unless and until recalled. In addition, a furloughed employee may not work remotely by, for example, using a fob, Blackberry, or other Department-issued mobile device. You should turn off all Department-provided mobile devices. You may, however, be permitted into the building for personal business at the credit union or to obtain forgotten items from your office. Any paid leave (annual, sick, court, etc.) approved for use during the furlough period is cancelled.

Employees who have completed a probationary or trial period or 1 year of current continuous employment in the competitive service under other than a temporary

Attachment C

appointment may appeal this action to the Merit Systems Protection Board (MSPB). Employees in the excepted service who have veterans preference may appeal to MSPB if they have completed 1 year of current continuous service in the same or similar positions as the one they now hold. Employees in the excepted service who do not have veterans preference and who are not serving a probationary or trial period under an initial appointment pending conversion to the competitive service may appeal to MSPB if they have completed 2 years of current continuous service in the same or similar positions in an Executive agency under other than a temporary appointment limited to 2 years or less.

Career SES appointees (except reemployed annuitants) who believe requirements of 5 CFR part 359, subpart H, or the agency's procedures have not been correctly applied may also appeal to MSPB. Career SES appointees may inspect the regulations and records pertinent to this action. Please contact your Executive Director or Management Office to schedule a time and location for such inspection.

If you have the right of appeal to MSPB and wish to appeal this action to the MSPB, you must file the appeal within 30 calendar days after the effective date of your furlough, or 30 days after the date of your receipt of this decision notice whichever is later. If you wish to file an appeal, you may obtain information about the appeals process and a copy of the appeals form from the MSPB website at <http://www.mspb.gov/appeals/appeals.htm>. You may wish to check MSPB's website for its operating status during this time. MSPB requires an appeal to be filed with the MSPB regional or field office serving the area where your duty station was located when the action was taken. Based upon your duty station, the appropriate field office is [identify appropriate regional office]. MSPB also offers the option of electronic filing at <https://e-appeal.mspb.gov/>. Employees have a right to representation in this matter and may be represented by an attorney or other person of their choosing.

Bargaining unit employees may grieve this action in accordance with the applicable negotiated agreement [provide citation to negotiated agreement] or may appeal to MSPB in accordance with the procedures outlined above, but not both. To obtain information on filing a grievance under the negotiated grievance procedure, contact [name of exclusive union representative].

If you feel this action is being taken as a result of reprisal for making a protected whistleblowing disclosure or for engaging in any of the protected activities outlined in 5 U.S.C. § 2302(b)(9), you may file a complaint with the Office of

Attachment C

Special Counsel (OSC), followed by (for claims of whistleblower reprisal or claims relating to protected activities under 5 U.S.C. § 2302(b)(9)(A)(i), (B), (C), or (D)) an Individual Right of Action (IRA) appeal to the MSPB. For further information regarding your rights to seek corrective action, please refer to 5 U.S.C. § 1221 and 5 C.F.R. §§ 1209.2 & 1209.5.

If you believe this action was motivated by unlawful discrimination based on race, color, religion, sex, national origin, age, disability, or genetic information, you may raise such allegations in a complaint with the Department's Office of Civil Rights. An EEO complaint is initiated by contacting an EEO counselor within 45 days of the effective date of this action and filing a formal complaint of discrimination after EEO counseling is completed. For further information on filing an EEO complaint, please refer to the EEOC's regulations at 29 C.F.R. § 1614.105

Attached is the SF-8, *Notice to Federal Employee about Unemployment Insurance*. Additional information about unemployment insurance is available at: <http://www.servicelocator.org/OWSLinks.asp>.

We recognize the difficult financial implications of any furlough, no matter how limited its length. We will make every effort to keep you informed as additional information regarding the agency funding level becomes available. If you have questions, contact your bureau Executive Director or Post Management Officer.

Deciding Official

Date

SAMPLE NOTICE OF FURLOUGH DURING HOLIDAY TO EXCEPTED EMPLOYEE DUE TO A LAPSE OF APPROPRIATIONS [Ensure that an SF-8 is attached to this notice]

In the absence of either a Fiscal Year (FY) 2018 appropriation, or a continuing resolution for the Department of State, no new financial obligations may be incurred by the Agency for functions funded through annual appropriations, except with respect to certain personnel who are otherwise authorized to continue to work. As you are aware, as an employee who has been excepted from furlough and continued to work during the shutdown, you are required to work on those days you would normally be scheduled to work. The upcoming [state holiday] on [state date], is not a day you would normally be scheduled to work, and we are not requiring you to work on that day. Because of the operation of the shutdown furlough rules, we must place you in a furlough status for the [state holiday] holiday. As an excepted employee, you are expected to return to work on your next regularly scheduled workday following the [state holiday] holiday. For the vast majority of you, this means you would return to work on [state date].

If you have a work schedule that does not include [state date], as a workday, you will follow the normal holiday rules for an “in lieu of” holiday. All full-time employees, including those on flexible or compressed work schedules, are entitled to an “in lieu of” holiday when a holiday falls on a non-workday. For example, if you have a Monday through Friday alternative work schedule (AWS), and [state holiday] is your regularly scheduled AWS day off, you will do as you have generally done for previous holidays and take your “in lieu of” holiday the work day immediately preceding Monday. For example, if the holiday is Monday, [insert date], your “in lieu of” holiday would be Friday, [insert date]. You would be in furlough status on Friday instead of Monday in this example. You would return to work on Tuesday, [insert date], because your regular day off is on Monday, [insert date].

This can be a bit confusing, so if you do not fall in the category above of working a Monday through Friday schedule and/or are unclear of when your “in-lieu of” holiday is to occur, please consult with your supervisor. In the event your supervisor is unavailable, please call or email your executive office.

This action is being taken because of a sudden emergency requiring curtailment of the agency’s activities; therefore, no advance notification is possible. The customary 30-day advance notice period and opportunity to answer are suspended under the provisions of 5 CFR 752.404(d)(2). The 30 day-advance notice otherwise

Attachment D

required by 5 CFR 359.806(a) for Senior Executive Service (SES) career appointees (other than reemployed annuitants) may be shortened or waived. If employees are being retained in your competitive level or competitive area, they are required for orderly suspension of agency operations or they are performing one of the excepted activities defined in the OMB memorandum.

During the furlough period, you will be in a non-duty, non-pay status. Also, during the furlough, you will not be permitted to serve as an unpaid volunteer, and therefore you must remain away from your workplace unless and until recalled. In addition, a furloughed employee may not work remotely by, for example, using a fob, Blackberry, or other Department-issued mobile device. You may, however, be permitted into the building for personal business at the credit union or to obtain forgotten items from your office. Any paid leave (annual, sick, court, etc.) approved for use during the furlough period is cancelled.

Employees who have completed a probationary or trial period or 1 year of current continuous employment in the competitive service under other than a temporary appointment may appeal this action to the Merit Systems Protection Board (MSPB). Employees in the excepted service who have veterans preference may appeal to MSPB if they have completed 1 year of current continuous service in the same or similar positions as the one they now hold. Employees in the excepted service who do not have veterans preference and who are not serving a probationary or trial period under an initial appointment pending conversion to the competitive service may appeal to MSPB if they have completed 2 years of current continuous service in the same or similar positions in an Executive agency under other than a temporary appointment limited to 2 years or less.

Career SES appointees (except reemployed annuitants) who believe requirements of 5 CFR part 359, subpart H, or the agency's procedures have not been correctly applied may also appeal to MSPB. Career SES appointees may inspect the regulations and records pertinent to this action at the following location: [identify location and times, as appropriate].

If you have the right of appeal to MSPB and wish to appeal this action to the MSPB, you must file the appeal within 30 calendar days after the effective date of your furlough, or 30 days after the date of your receipt of this decision notice whichever is later. If you wish to file an appeal, you may obtain information about the appeals process and a copy of the appeals form from the MSPB website at <http://www.mspb.gov/appeals/appeals.htm>. MSPB requires an appeal to be filed with the MSPB regional or field office serving the area where your duty station

Attachment D

was located when the action was taken. Based upon your duty station, the appropriate field office is [identify appropriate regional office]. MSPB also offers the option of electronic filing at <https://e-appeal.mspb.gov/>. You may wish to check MSPB's website for its operating status during this time. Employees have a right to representation in this matter and may be represented by an attorney or other person of their choosing.

Bargaining unit employees may grieve this action in accordance with the applicable negotiated agreement [provide citation to negotiated agreement] or may appeal to MSPB in accordance with the procedures outlined above, but not both. To obtain information on filing a grievance under the negotiated grievance procedure, contact [name of exclusive union representative].

If you feel this action is being taken as a result of reprisal for making a protected whistleblowing disclosure or for engaging in any of the protected activities outlined in 5 U.S.C. § 2302(b)(9), you may file a complaint with the Office of Special Counsel (OSC), followed by (for claims of whistleblower reprisal or claims relating to protected activities under 5 U.S.C. § 2302(b)(9)(A)(i), (B), (C), or (D)) an Individual Right of Action (IRA) appeal to the MSPB. For further information regarding your rights to seek corrective action, please refer to 5 U.S.C. § 1221 and 5 C.F.R. §§ 1209.2 & 1209.5.

If you believe this action was motivated by unlawful discrimination based on race, color, religion, sex, national origin, age, disability, or genetic information, you may raise such allegations in a complaint with the Department's Office of Civil Rights. An EEO complaint is initiated by contacting an EEO counselor within 45 days of the effective date of this action and filing a formal complaint of discrimination after EEO counseling is completed. For further information on filing an EEO complaint, please refer to the EEOC's regulations at 29 C.F.R. § 1614.105

Attached is the SF-8, *Notice to Federal Employee about Unemployment Insurance*. Additional information about unemployment insurance is available at: <http://www.servicelocator.org/OWSLinks.asp>.

We recognize the difficult financial implications of any furlough, no matter how limited its length. We will make every effort to keep you informed as additional information regarding the agency funding level becomes available. If you have questions, contact your bureau Executive Director or Post Management Officer.

Attachment D

Deciding Official

Date